IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ARVIND BHAKTA,	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	
	:	
PANKAJ K. SHAH,	:	NO. 07-CV-3065
Defendant.	:	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. INTRODUCTION

On June 27, 2007, Plaintiff Arvind Bhakta commenced the present action in the Court of Common Pleas of Montgomery County. On July 27, 2007, Defendant Pankaj Shah filed a timely notice to remove the case to this Court based on diversity jurisdiction. In this action, Plaintiff seeks to recover $465,000, which allegedly constitutes the balance outstanding from a loan that he claims to have made to Defendant.

Count I of Plaintiff's Complaint avers a cause of action for breach of contract; Count II avers a cause of action for fraud; and Count III avers a cause of action for wrongful conversion. Defendant filed two motions in limine alleging that Plaintiff should be precluded from asserting a breach of contract action and from recovering under his fraud and conversion claims. On September 23, 2008, this Court issued an Order denying Defendant's Motion in Limine to Preclude Plaintiff from Asserting a Cause of Action for Breach of Contract (Doc. No. 23) and granting Defendant's Motion to Bar Plaintiff's Recovery Under Tort (Doc. No. 24). Accordingly, the only claim properly remaining before this Court is Plaintiff's claim for breach of contract.

A one-day bench trial commenced in this Court on October 7, 2008. For the reasons set forth below, judgment is entered in favor of Defendant and against Plaintiff.

II. FINDINGS OF FACT

Upon consideration of Plaintiff's Proposed Findings of Fact and Conclusions of Law (Doc. No. 33) and the testimony, exhibits, and arguments presented during the bench trial, the Court finds the following facts:

Top One Trading, LLC, ("Top One") is a limited liability company, which was organized on June 21, 2004 in the United Arab Emirates. (Pl.'s Trial Ex. 67.) Defendant was the Managing Director of Top One and owner of forty-nine percent of the company. (Id. at 4.) At the time the events giving rise to this litigation occurred, Plaintiff had ownership stakes in several hotel companies. Plaintiff and Defendant were introduced in 1996 by family and engaged in a social relationship thereafter.

Plaintiff had notice that Defendant worked for Top One. On cross-examination at trial, Plaintiff testified that, on at least one occasion, he attended an event with Defendant at the offices of Top One where Plaintiff spoke with attendees about business matters. Also, on November 1, 2005, Defendant sent Plaintiff an e-mail explaining the types of products he was buying. The e-mail was signed "Pankaj Shah [new line] Top One Trading [new line] Dubai" and was sent from the e-mail address "topone@eim.ae." (Def.'s Trial Ex. 25.)

In November of 2005, the parties engaged in negotiations to collaborate in a business transaction in which Plaintiff would provide the capital for a steel-buying venture in Korea. On November 28, 2005, Defendant sent Plaintiff an e-mail listing the terms of their agreement. (Pl.'s Trial Ex. 5.) The e-mail stated, in part, the following:

> With reference to our several telecons regarding tying of our companies in business relationship . . . [h]ere is our understanding of this deal of steel which we will be buying from Korea:
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> 1. You will transfer the sum of $550,000 . . . to my company account namely Top One Trading (LLC). You have the account details faxed by my office.
> 2. I will purchase the steel from Korea from my suppliers and bring them to the UAE and sell to my buyers in this market.
> 3. After deducting the expenses . . . what ever will be profit, it will be shared equally by us 50/50.
> 4. Your capital money will be returned to you to your account unless we agree on [a] new shipment deal.
>
> Hope the above is clear and in case you have any other points to be mentioned in this . . . feel free to write to me. . . .

(Id.) The e-mail was signed "Pankaj Shah [new line] Top One Trading (LLC)," followed by the company's address and telephone numbers. (Id.) Neither party submitted any evidence that Defendant wrote to Plaintiff to add any other point to the agreement. On November 30, 2005, Plaintiff transferred $500,000 to the account of Top One at the Abu Dhabi International Bank. (Pl.'s Trial Ex. 7.)

On April 4, 2006, Defendant sent Plaintiff an accounting of the steel shipment.[1] (Pl.'s Trial Ex. 24-25.) Between March 8, 2006 and April 30, 2006, Defendant engaged in several additional steel-buying transactions. (Pl.'s Trial Exs. 18-21, 23, 26-27, 29-31.) From May through July 2006, Plaintiff and Defendant exchanged several e-mails regarding difficulties with the intermediary in their latest shipment project, Muhammad Liaqat Chaudhry (known as "Cheema"). (Pl.'s Trial Exs. 35, 38-39, 41; Def.'s Trial Ex. 8-11.) The parties discussed

[1] It is not clear from the evidence presented by the parties whether these transactions represented one or more additional steel-buying projects. It is also unclear to what extent Plaintiff was aware of the transactions. Plaintiff requested an accounting for "the second shipment of steel from Korea to Dubai" on August 12, 2006. (Pl.'s Trial Ex. 53.)

problems obtaining from Cheema any funds produced by that project.[2] (Id.)

On May 30, 2006, Defendant wrote Plaintiff an e-mail in which he stated, "I am planning to go to India tomorrow and try to sell some of my paper stocks, [i]f I am successful, I can send some money from that to [you] too." (Pl.'s Trial Ex. 38.) On June 5, 2006, and June 9, 2006, Defendant again sent Plaintiff e-mails stating that he would try to send Plaintiff money. (Pl.'s Trial Exs. 39, 41.) On July 10, 2006, Defendant sent Plaintiff another e-mail in which he stated, "I [will] do my best and send you money as soon as I have something concrete." (Pl.'s Trial Ex. 44.) In these e-mails, Defendant never expressly agreed to take personal responsibility for the debt or to be personally liable on the agreement. Defendant also never specified what amount of money he expected to send to Plaintiff. As of the time of trial, Plaintiff had received $35,000 from Defendant.

Defendant stated in his deposition that Top One "stopped doing business" around June 2006. (Pl.'s Trial Ex. 68b.) However, as late as September 2006, Top One's bank account remained in existence and Defendant continued acting on behalf of Top One to make payments to several business entities from that account. (Pl.'s Trial Ex. 58.)

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[2] On June 29, 2006, Plaintiff wrote an e-mail to Defendant about collaborating with Defendant to bring a lawsuit against Cheema. (Def.'s Trial Ex. 10.) From August through October of 2007, Plaintiff communicated directly with Cheema via e-mail to request documents and records related to the transactions in which Cheema collaborated with Defendant. (Pl.'s Trial Exs. 18-19, 22.) In September 2007, Plaintiff received two e-mails from Awards Shipping Agency in Korea stating that, since 2006, Cheema was being prosecuted for fraud in Korea. (Pl.'s Trial Exs. 20-21.)

III. CONCLUSIONS OF LAW

In the present case, Plaintiff argues that Defendant is personally liable on the contract.[3] Under Pennsylvania law, the plaintiff has the burden to prove by a preponderance of the evidence that the defendant is liable under the contract that is the basis of the plaintiff's suit. See Viso v. Werner, 369 A.2d 1185, 1186 (Pa. 1977).

In Pennsylvania, "an individual acting as an agent for a disclosed [principal] is not personally liable on a contract between the [principal] and a third party unless the agent specifically agrees to assume liability." In re Estate of Duran, 692 A.2d 176, 179 (Pa. Super. Ct. 1997) (citations omitted); see also Publicker Indus., Inc. v. Roman Ceramics Corp., 652 F.2d 340, 343 (3d Cir. 1981). The Pennsylvania Supreme Court has held that, "[i]f the alleged contract is in the name of the agent, but the name of the principal is disclosed, there exists a strong presumption that it is the intention of the contracting parties that the principal and not the

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[3] In his pre-trial memorandum, Plaintiff implied that one of the legal issues that would be discussed at trial would be whether Plaintiff could be personally liable under the contract even if he was not directly a party to the contract. (Pl.'s Pre-Trial Mem. 3.) Judging from the single case cited by Plaintiff for this legal issue, this argument involved finding Plaintiff personally liable by piercing the corporate veil of Top One. Under Pennsylvania law, "[t]here is a strong presumption against piercing the corporate veil . . . [and a]ny court must start from the general rule that the corporate entity should be recognized and upheld, unless specific, unusual circumstances call for an exception." Lumax Indus. v. Aultman, 669 A.2d 893, 895 (Pa. 1995) (citations omitted). In the present case, the only reference that Plaintiff made to this theory was in his Pre-Trial memorandum, where he simply cited one case that addressed that issue in his "legal issues" section. (Pl.'s Pre-Trial Mem. 3.) However, Plaintiff did not address this issue in his complaint, during oral argument, or in his Proposed Findings of Fact and Conclusions of Law. Accordingly, we find that Plaintiff did not properly raise this argument. Even if he had raised it, however, we find that he did not present sufficient evidence of the factors that Pennsylvania courts consider in deciding whether to pierce the corporate veil, namely "undercapitalization, failure to adhere to corporate formalities, substantial intermingling of corporate and personal affairs and use of the corporate form to perpetrate a fraud." Lumax Indus., 669 A.2d at 895.

agent should be a party to the contract." Viso, 369 A.2d at 1187. Therefore, to answer the question of individual liability in this case we must determine: (1) whether Defendant disclosed to Plaintiff that he was acting for Top One in making the agreement; and (2) whether Defendant agreed to be individually liable on the agreement. We address each question in turn.

A. Disclosed Principal

A principal is a disclosed principal if "at the time of a transaction conducted by an agent, the other party thereto has notice that the agent is acting for a principal and of the principal's identity." Bash v. Bell Tel. Co., 601 A.2d 825, 832 (Pa. Super. Ct. 1992). A person has notice that the agent is acting for a principal if "he has actual knowledge of it, has reason to know it, should know it, or has been given notification of it." Vernon D. Cox & Co. v. Giles, 406 A.2d 1107, 1110 (Pa. Super. Ct. 1979). We find that Plaintiff did have notice that Defendant was acting on behalf of Top One. The Pennsylvania Supreme Court has found that, where a plaintiff knew that the defendant was involved with a business and the defendant used a business card with the business's name on it when dealing with the plaintiff, the plaintiff had notice that the defendant was acting in a representative capacity. Sweitzer v. Whitehead, 173 A.2d 116, 118-19 (Pa. 1961). Here, Plaintiff had notice that Defendant was involved with Top One since he had visited the company's offices with Defendant previously and had previously received at least one business-related e-mail where Plaintiff's signature block included "Top One Trading, Dubai." (Def.'s Trial Ex. 25.) Also, the November 28, 2005 e-mail memorializing the agreement was signed by Defendant followed by the name of the company, "Top One Trading," as well as its address and telephone number. (Pl.'s Trial Ex. 5.) Although the name of a company following the signature of a party to a contract is not conclusive evidence that the party was acting in a

representative capacity, it does help support that conclusion absent evidence to the contrary. See Viso 369 A.2d at 1188. Here, Defendant made no mention of his personal liability at all in the written instrument. In fact, Defendant spoke of "tying our companies in [a] business relationship." (Pl.'s Trial Ex. 5.) Also, pursuant to the agreement, Defendant instructed Plaintiff to transfer the funds to "my company account namely Top One Trading (LLC)." (Id.) Therefore, we find that Defendant knew or at least had reason to know that Defendant was acting as an agent of Top One. Accordingly, Top One was a disclosed principal.

B. Defendant's Agreement to Be Personally Liable

Given that Top One was a disclosed principal, the burden is on Plaintiff to show that Defendant agreed to be personally liable on the contract. Pennsylvania courts have consistently found that "[i]t is a basic tenet of agency law that an individual acting as an agent for a disclosed principal is not personally liable on a contract between the principal and a third party unless the agent specifically agrees to assume liability." Casey v. GAF Corp., 828 A.2d 362, 369 (Pa. Super. Ct. 2003); see also Publicker Industries, Inc., 652 F.2d at 343; In re Estate of Duran, 692 A.2d at 179. As we mentioned above, where the principal is disclosed, "there exists a strong presumption that it is the intention of the contracting parties that the principal and not the agent should be a party to the contract." Viso 369 A.2d at 1187. Plaintiff argues that he agreed orally to loan the money to Defendant and that Defendant later admitted to being personally liable on the debt. We address each argument below.

Plaintiff argues that he orally agreed to loan the money to Defendant and that Defendant should therefore be individually liable. The only evidence that was presented regarding the alleged oral agreement is Plaintiff's own testimony and the November 28, 2005 memorializing e-

mail. In his testimony, Plaintiff did not allege that Defendant specified that he, not his company, would be liable on the loan. Accordingly, his own testimony, even if fully believed, is not sufficient to conclusively prove that Defendant undertook personal liability. In addition, both parties agree that the memorializing e-mail embodies the basic terms of the agreement. This e-mail, which Defendant received two days before wiring the fund to Top One, made no mention of Defendant's individual liability and, in fact, clearly showed that the transaction would be conducted through Top One. The e-mail spoke of the "tying of our companies in business," directed Plaintiff to wire the funds to the Top One bank account directly, and contained the name and contact information of Top One immediately below the signature line. (Pl.'s Trial Ex. 5.) The e-mail also stated, "in case you have any other points to be mentioned in this . . . feel free to write me." (Id.) Although Plaintiff had an opportunity to object to the language in the e-mail or to otherwise confirm Defendant's alleged individual liability prior to wiring the money, he did not do so. Instead, having received notice that Defendant was acting on behalf of Top One, Plaintiff wired the funds to the Top One account. (Pl.'s Trail Ex. 7.) Accordingly, we find that the evidence does not establish that Defendant agreed to be personally liable on the contract.

Plaintiff also argues that four of Defendant's e-mails, sent in June and July of 2006, in which he asserted that he would try to send Plaintiff money, indicate that Defendant "admitted that he is personally obligated and liable to Plaintiff." (Pl.'s Proposed Findings of Fact and Conclusions of Law 5.) However, in those e-mails, Defendant never mentioned that he was personally liable for the debt. (Pl.'s Trial Ex. 38-39, 41, 44.) In fact, in each e-mail, Defendant stated that his ability to send money to Plaintiff depended, at least partly, on the success of other

business transactions that were pending at the time.[4] (Id.) He also never mentioned how much money he planned on sending. Also, at the time that Defendant sent the four e-mails, he continued to manage the financial affairs of Top One and to make payments on behalf of Top One from the company's bank account to business entities.[5] In addition, each of the e-mails on which Plaintiff relies was sent by Defendant from e-mail accounts that included the Top One name. (Id.) Therefore, the evidence does not support a finding that Defendant's statements about sending money to Plaintiff showed anything more than Defendant's attempting to settle Top One's debt to Plaintiff. Accordingly, considering the evidence presented and given the strong presumption in Pennsylvania law against finding an agent liable when there is a disclosed principal, we find that Plaintiff failed to conclusively establish that Plaintiff agreed to be personally liable on the loan.

IV. CONCLUSION

Based on the factual findings and legal conclusions set out above, we find that Plaintiff failed to carry his burden to prove by a preponderance of the evidence that Defendant was personally liable under the contract. Accordingly, we hereby grant judgment in favor of

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[4] In one e-mail, dated July 10, 2006, Defendant stated that he would send some money "from either the sales of paper lot in India or from the apartment sale in Dubai." (Pl.'s Trial Ex. 44.) At trial, Plaintiff argued that Defendant's agreement to sell the apartment indicated his personal liability. However, Plaintiff presented no evidence as to which apartment Defendant referred to or whether it belonged to Plaintiff individually or to Top One. Accordingly, we do not find that this statement proves Defendant's individual liability.

[5] Plaintiff himself presented exhibits showing that Defendant made several payments to various creditors from Top One's accounts as late as September 12, 2006. (Pl.'s Trial Exs. 40, 42-43, 45-52, 54-55, 57, 58.) The e-mails from Defendant stating that he would send money to Plaintiff, which he alleges evidence Defendant's individual liability, are dated on or before July 10, 2006. (Pl.'s Trial Ex. 38-39, 41, 44.)

Defendant and against Plaintiff on all counts. An appropriate Order follows.

BY THE COURT:

/S/LEGROME D. DAVIS

Legrome D. Davis, J.